

**Jagged Coal, Inc. and United Mine Workers of America, District 17, Sub-District 3. Case 9-CA-28907**

February 26, 1993

**SUPPLEMENTAL DECISION AND ORDER**

**BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT**

On January 24, 1992, the National Labor Relations Board issued a Decision and Order,<sup>1</sup> inter alia, ordering Jagged Coal, Inc., to provide the level of health benefits set forth in a collective-bargaining agreement between the Respondent and the Union and to make whole its unit employees for any expenses incurred as a result of the Respondent's failure to provide the contractually required level of health benefits in violation of the National Labor Relations Act. On September 23, 1992, the United States Court of Appeals for the Fourth Circuit enforced the Board's Order.

A controversy having arisen over the amount of medical payments due under the Board's Order, on October 23, 1992, the Regional Director for Region 9 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent has failed to file an answer.

By letter dated December 11, 1992, the Regional Director advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was timely filed by the Respondent, summary judgment would be sought. The Respondent filed no answer.

On January 14, 1993, the General Counsel filed with the Board a motion to transfer the case to the Board and Motion for Summary Judgment, with exhibits attached.<sup>2</sup> On January 15, 1993, the Board issued a sup-

<sup>1</sup> 306 NLRB No. 30.

<sup>2</sup> The compliance specification was served on the Respondent on October 23, 1992. It was returned to the Regional Office unclaimed and marked that the post office box to which it was addressed was closed. On December 11, 1992, the Respondent was again served by certified mail and regular mail. On January 13, 1993, the remailing of the specification by certified mail was returned to the Regional Office with a notation indicating that the Respondent had received a second notice concerning the certified mail. To date, the documents sent by regular mail have not been returned to the Regional Office as unclaimed or undelivered.

On January 12, 1993, copies of the motion to transfer proceedings to the Board and Motion for Summary Judgment were mailed to the Respondent by certified mail, return receipt requested, addressed to the Respondent's president, at the last known address where he has received mail. In addition copies were served by regular mail. On January 29, 1993, the copy mailed by certified mail was returned to the Regional Office unclaimed by the Respondent,

plemental order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on the Motion for Summary Judgment**

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the medical payments due under the terms of the Board's Order are as stated in the compliance specification and we will order payment by the Respondent to the discriminatees.

**ORDER**

The National Labor Relations Board orders that the Respondent, Jagged Coal, Inc., its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987):

bearing a notice that the Respondent had received a second notice concerning this certified mail. The copy sent by regular mail has not been returned to the Regional Office as unclaimed or undelivered.

Service of these documents was properly accomplished by deposit in the mail to the Respondent's last known address. *Mondie Forge Co.*, 309 NLRB No. 8, fn. 1 (Nov. 25, 1992). Moreover, a respondent's failure or refusal to claim certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. Id.

## DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

Terry W. Browning	\$4,187.96	Warren E. Richards	\$489.16
Timmy Cook	2,578.33	Robert L. Williams	13,028.86
David L. Curry	3,778.86	Wayne Williamson	2,616.46
Harold J. McGraw	2,081.11	John Wright	629.39
Glenn R. Messer	2,784.22		